



# CITY OF HOUSTON

Legal Department

**Sylvester Turner**

Mayor

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April 24, 2023

The Honorable J.M. Lozano  
Chairman  
House Committee on Urban Affairs  
P.O. Box 2910  
Austin, TX 78768

Dear Chairman Lozano and Members of the Committee:

On behalf of the City of Houston ("City"), I write in opposition to Senate Bill ("SB") 736 requiring mandatory arbitration for firefighters applicable only to a municipality the size of the City of Houston. I ask that this written testimony be included in the formal legislative record for SB 736. The City and I thank the Committee and Chairman for the opportunity to comment regarding this proposed legislation.

My name is Arturo G. Michel. I am the City Attorney for the City of Houston. I testify with the City's full authority to speak on its behalf as part of my role and responsibilities.

The City of Houston opposes SB 736. SB 736 would amend Chapter 174 of the Texas Local Government Code to change the arbitration provision of the collective bargaining statute from a voluntary provision that must be agreed upon by both the municipality and the firefighters' bargaining agent to one where a single party can compel arbitration. The bill seeks to address the inability of Local 341, the Houston firefighters' bargaining agent, and the City to reach a collective bargaining agreement in the past several years.

A municipality and its firefighters benefit the most from a negotiated multi-year agreement that is reached voluntarily. No court nor arbitration board is as knowledgeable about firefighter compensation and conditions of work as the municipality and firefighters. A negotiated agreement allows a middle ground to be reached with a give and take that each party determines

to be in its best interest. The unfortunate aspect of Houston's situation is the parties have not attempted negotiation for several years because of litigation involving compensation issues. This litigation has only very recently concluded, save any rehearing—after the introduction of SB 736. In two separate opinions, the Texas Supreme Court upheld the Legislature's 2017 pension reforms challenged by Houston firefighters, held that a Houston firefighter-initiated charter amendment to receive the same pay as Houston police officers was preempted by state law, and upheld the judicial enforcement provisions of Chapter 174. Now that the litigation has essentially concluded, the parties have no impediment to resuming negotiations that have been dormant for several years.

In most situations, municipalities and firefighters reach a voluntary agreement without judicial or arbitration intervention. There are several reasons that favor voluntary agreements and disfavor incentives to arbitrate or litigate.

In the first instance, the premise of Chapter 174 collective bargaining is that it is applicable only if the voters of the municipality approve it. Houston voters did but approved a scheme that did not have mandatory arbitration. Passage of SB 736 changes what Houston voters approved.

Arbitration under Chapter 174 sets compensation and conditions of work for only one year. Without the incentive to negotiate as exists in the current statute, arbitration becomes an annual event with annual associated costs for attorney, expert, and arbitrator fees. Such costs can be significant.

The limitations of arbitration are more pronounced and significant under the statutory criteria for determining firefighter compensation and conditions of work. In arbitration relative to litigation, discovery is not required to be as extensive, the parties are often not required to strictly adhere to the rules of evidence, and an arbitration board does not have the same ability to subpoena witnesses as a judge does. Although these relaxed standards may contribute to concluding arbitration more quickly than a court proceeding, it will almost certainly prevent the development of facts to fairly determine compensation under the legislative criteria. Chapter 174's central compensation and conditions of employment criterion is:

- (1) substantially equal to compensation and other conditions of employment that prevail in comparable employment in the private sector;  
and
- (2) based on prevailing private sector compensation and conditions of employment in the labor market area in other jobs that require the same or similar skills, ability, and training and may be performed under the same or similar conditions.

Tex. Loc. Gov't Code, § 174.021.

In the absence of enforceable subpoena power, production of private sector data cannot be compelled, nor can a private entity be compelled to share its data with both parties resulting in a distinct advantage to the party fortunate enough to obtain the data. Adequate discovery and the full application of the rules of evidence are needed to ensure fairness and the full development of relevant facts. This is particularly true given that “comparable private sector employment and same or similar skills, ability, and training under the same or similar conditions” are hotly contested issues. There are no obvious private sector comparators for municipal firefighters.

Additionally, such private sector comparators do not necessarily consider peculiar aspects of Houston firefighter compensation such as a lower overtime threshold than all other municipalities (46.7 hrs. v. 53 hrs.) that translates into additional firefighter compensation. The City’s ability to fund firefighter compensation is also greatly impacted by its charter amendment revenue cap that is more stringent than the state-imposed revenue cap, and the City may have to contend with a second charter amendment revenue cap more stringent than the first based on the April 21, 2023, Texas Supreme Court ruling in *Hotze v. Turner*. <https://www.txcourts.gov/media/1456290/211037.pdf>

To underscore Chapter 174’s reliance on voter approval of collective bargaining, voters of the Cities of Austin and San Antonio both approved mandatory arbitration but did so requiring the arbitration board to consider comparable *public* sector employment, the municipality’s available revenues and contractual obligations, impact on taxpayers, and the municipality’s history of firefighter collective bargaining and negotiations. For municipalities, required by law to have annual balanced budgets and provide a myriad of services to its residents, a faithful application of the Austin and San Antonio criteria provides for fair firefighter compensation and delivery of other crucial services to its residents within its budgetary means.

Returning to the negotiating table allows the parties to build on the 18% firefighter raise over 3 years (year 3 begins this July 1<sup>st</sup>) that the City has implemented.

For forgoing reasons, the City respectfully opposes SB 736.

Very truly yours,

A handwritten signature in black ink, appearing to read "Arturo Michel", written in a cursive style.

Arturo G. Michel  
City Attorney  
City of Houston